IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL REVISION APPLICATION No.153 of 1998.

The State of Maharashtra ..Applicant.

Vs.

Jagannath Ramchandra Beleshe ..Respondent.

Ms M.M. Deshmukh, A.P.P. for the Applicant.
None for the respondent.

CORAM: V.C. DAGA,J.
DATED: 4TH JULY, 2007.

P.C.:-

1. Heard rival parties.

2. Perused application and order impugned therein.

3. This revision is directed against the order dated 16.4.1998 passed below Exh.34 in Sessions Case No. 107 of 1993, whereunder the application filed by the applicant-prosecution seeking permission to summon accused no.2 Hanumant Sakharam Khandagale to examine him as approver on behalf of the prosecution came to be rejected mainly on the grounds; (1) that the accused no.2 Hanumant Khandagale has not been tendered pardon in relation to the offence punishable under Section 302 read with section 34 of the I.P.C. as such there was no occasion to accept pardon tendered to the

accused, (2) and that the accused no.2 was not detained under Section 306 (4) of the Cr.P.C.

4. Learned A.P.P. brought to my notice a specific order dated 30.1.1993 passed by the Chief Judicial Magistrate, Satara before whom accused no.2 was produced with all investigation papers alongwith an application dated 30.1.1993 together with undertaking given by accused no.2 to make full and final disclosure of the case and also expressed his willingness to seek pardon.

5. Learned Chief Judicial Magistrate, Satara by detailed order dated 30.1.1993 tendered pardon to accused no.2 and on the same day accused no.2 has accepted the said pardon tendered to him. The said order is to be found in the record at page Nos. 39, 40 and 41. Therefore, the ground on which application came to be rejected holding that the pardon was neither tendered nor accepted, does not stand to scrutiny of Law.

6. The second ground on which the prosecution was non-suited is that accused no.2 was not detained under Section 306 (4) of the Cr.P.C., but the record shows that the

Judicial Magistrate, First Class, Wai had issued direction to the Jailer Authority Satara, District Prison, Satara requiring him to receive and detain accused no.2 into his custody. The warrant issued with further direction to detain him in jail until further order of the court is also on record. The accused no.2 was arrested on 17.1.1993. In view of the factual material available on record, second ground held against the prosecution in the impugned order also does not stand to the scrutiny of Law.

7. So far as framing of the charge is concerned, it will hardly have any effect on the right of the prosecution to examine accused no.2 as approver. The charge framed against him shall be void. In the above view of the matter, impugned order is quashed and set aside and the prosecution is permitted to examine accused no.2 as approver.

8. In the result, Revision Application is allowed in terms of this order with no order as to costs.

(V.C. DAGA,J.)